

Appl. No. 10/695283
Docket No. 9086M
Amdt. dated December 2, 2010
Reply to Office Action mailed on September 14, 2010
Customer No. 27752

REMARKS

Claims 1 and 6-9 remain under consideration. Claim 1 has been amended to recite the polymer as vinyl acetate/vinyl pyrrolidone. Basis is at page 10, line 29 (vinyl acetate) and page 12, line 3 (vinyl pyrrolidone). It is submitted that all amendments are fully supported and entry is requested.

Rejections Under 35 USC 103

Claims 1 and 6-9 stand rejected over US 2002/0058015, the Combriza article, the Toxicology journal article in view of US 2003/0017125 and further in view of US 6,040,282, for reasons of record at pages 3-7 of the Office Action.

Claims 6-8 also separately stand rejected, for reasons of record at pages 8-11 of the Office Action.

Applicants respectfully traverse all rejections, to the extent they may apply to the claims as now amended.

For the record, the arguments previously made in support of patentability continue to apply, but will not be repeated herein for the sake of brevity.

With regard to the §103 rejections, under MPEP 2142 the Examiner bears the burden of factually supporting any *prima facie* conclusion of obviousness. Moreover, the cited references must teach or suggest all the claim limitations. See, for example, *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). If the Examiner does not prove a *prima facie* case of unpatentability, then without more, the Applicant is entitled to the grant of the patent. See *In re Oetiker*, 977 F.2d 1443. Applicants respectfully assert that the Office Action fails to meet these criteria, and thus fails to make a *prima facie* case of obviousness under 35 USC §103 with regard to the claims as now amended.

The Examiner's attention is first directed to the Guskey patent US 6,040,282. This patent has been used in making all rejections, importantly to fill the many gaps in the disclosures of Hood '8015 and Rollat '7125, as well as the various cited journal articles. See paragraphs 11, 12, 13, 15, 16, 18 and 27 of the Office Action.

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Yet, Guskey (column 8, lines 22-25) teaches:

Surprisingly, it has been found that conventional styling polymers consisting of copolymers of vinyl pyrrolidone and vinyl acetate do not exhibit the curl retention benefits required of the present invention.

Thus, this key support for all rejections herein specifically teaches away from using the polymers which are now the subject of the amended claims herein. It is, of course, basic patent law that, when, as here, the claimed invention involves what the cited reference teaches to avoid, "... [T]his is the very antithesis of obviousness." *In re Buehler*, 515 F.2d 1134, 1141 (CCPA 1975).

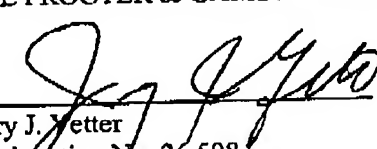
Moreover, it is clear that one cannot combine references if those references teach away from their combination. MPEP 2145 X.D.2. Since none of the other cited documents teach the VA/VP polymers for use in the present manner, and since Guskey teaches away from their use, all combinations of the cited documents must fail, as a matter of law.

In light of the foregoing, reconsideration of all rejections is requested.

Respectfully submitted,

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By


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Date: December 2, 2010
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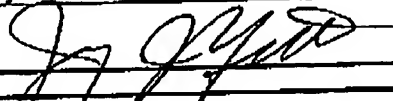
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REQUEST FOR CONTINUED EXAMINATION (RCE) TRANSMITTAL Address to: Mail Stop RCE Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	10/695,283
	Filing Date	October 28, 2003
	First Named Inventor	Robert Richard Dykstra
	Art Unit	1796
	Examiner Name	Aaron J. Greso
	Docket Number	9086M
	Confirmation Number	3960

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application.
 Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 C.F.R. § 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).
- a. ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ii. ☐ Other _____
- b. ☒ Enclosed
- i. ☒ Amendment/Reply
- ii. ☐ Affidavit(s)/Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other _____
2. **Miscellaneous**
- a. ☐ Suspension of action on the above-identified application is requested under 37 C.F.R. §1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 C.F.R. § 1.17(i) required)
- b. ☐ Other _____
3. **Fees** The RCE fee under 37 C.F.R. §1.17(e) is required by 37 C.F.R. §1.114 when the RCE is filed.
- ☒ Authorization is hereby given to charge the following fees, or credit any overpayments, to Deposit Account No. **16-2480**.
- i. ☒ RCE fee required under 37 C.F.R. §1.17(e)
- ii. ☐ Extension of time fee (37 C.F.R. §§1.136 and 1.17)
- iii. ☐ Suspension of action fee under 37 C.F.R. 1.17(i)
- iv. ☐ Other _____

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED		
NAME (Print/Type)	Jerry J. Yetter	Reg. No. (Attorney/Agent) 26,598
SIGNATURE		DATE December 2, 2010

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